

**Milton Joint Town Council  
and Planning and Zoning Meeting  
Milton Library  
121 Union Street  
Monday, November 18, 2013, 6:00 p.m.**

**Transcriptionist: Helene Rodgville  
[Minutes are not Verbatim]**

1. Call to Order – Mayor Jones

2. Roll Call – Mayor Jones

Tim Nicholson	Present	Planning and Zoning
Mayor Jones	Present	Town Council
Councilman Coté	Present	Town Council
Vice Mayor Booros	Present	Town Council
Virginia Weeks	Present	Planning and Zoning
Lynn Ekelund	Present	Planning and Zoning
Linda Edelen	Present	Planning and Zoning
Councilman Collier	Present	Town Council
Barry Goodinson	Present (arrived late)	Planning and Zoning

3. Additions or corrections to the agenda

Mayor Jones: Are there any additions or corrections to this agenda this evening?

Virginia Weeks: Madame Mayor, may I ask... I'd like to go outside and call Mark and Barry. I'm afraid they think the meeting might be at the usual time of 6:30 and didn't realize the difference? Thank you.

Mayor Jones: Alright, we'll give you a moment to do that before we get started.

Seth Thompson: And just for the member's benefit, Ms. Ekelund I don't know if you're going to fill in for Mr. Mazzeo since he's the Chair and he's not here, but technically, the Council and the Commission need to approve the agenda, since it's a meeting of both bodies.

Lynn Ekelund: I'll fill it.

Seth Thompson: We just basically have to do things twice tonight.

Lynn Ekelund: Okay.

Mayor Jones: Are there any additions or corrections to the agenda this evening? Hearing none, do I hear a motion too approve?

4. Agenda Approval

Councilman Coté: Motion to approve

Lynn Ekelund: Hearing none, do I hear a Planning and Zoning motion to approve?

Linda Edelen: So moved.

Seth Thompson: We'll need a second for each.

Vice Mayor Booros: I'll second

Lynn Ekelund: All in favor say aye. Opposed. Motion carried.

Mayor Jones: Council all those in favor say aye. Opposed. Motion carried. Just a reminder this evening for Helene's benefit, since it's a mixture, if you'd be so kind as to state your name before you do speak into the microphone; asking again that there be a limitation on any side bars that you may have. It is confusing in transcribing a set of minutes.

5. Discussion and possible vote on:

- a) Procedural relationship between Planning and Zoning Commission and Mayor/Council
- b) Division of responsibilities between Planning and Zoning Commission and Mayor/Council
- c) Define work flow process between Planning and Zoning Commission and Mayor/Council
- d) Improvement to communication between the Commission, Mayor/Council and Town Staff
- e) Outline of draft ordinance procedures and reviews
- f) Creation of systems and relationships for increased clarity and collaboration to benefit the Town of Milton

Seth Thompson: Madame Mayor, just one note. The librarian informed us that they will be locking up at 8:00 p.m., so we need to wrap up at least 10 minutes before then.

Mayor Jones: Thank you. This agenda was put together by Mr. Mazzeo and so I have to tell you I fully expected that these issues were topics that Planning and Zoning wished to speak directly to the Council about, so is there a start to the procedural relationship between Planning and Zoning and the Mayor and Council?

Seth Thompson: I can chime if you want the Solicitor's perspective; just kind of as a very broad overview? It's important when we're discussing that relationship to figure out what application, what type of application we're dealing with, so for instance, a site plan only goes to Planning and Zoning. That's the way your Code currently has it set up, so Planning and Zoning does a preliminary review and then a final review of the site plan. The site plan doesn't go to Council. Compare that with a sub-division application. That's going to go to Planning and Zoning and it's also going to go to Council. And it will go on a preliminary and on the final. In terms of amending the Zoning Code, obviously we have somewhat of an issue in terms of language. There's been a proposed ordinance to kind of clear up whether it's a requirement that any proposed amendment to the Zoning Code, and when I say proposed amendment I mean either redrawing some of the zoning districts, or changing the requirements within the zoning districts; whether that has to go to Planning and Zoning for a recommendation before going to Council. So those are the three typical procedural interactions with Planning and Zoning and with Council. I'm trying to think if there are any other applications that jump right out. Perhaps a revision to the Master Plan. I think the Master Plan gets approved at Planning and Zoning and at the Council level. I'm also happy to deal with any questions along the way. I can give you more specific information if you guys have specific questions as we go, time periods, that sort of thing.

Virginia Weeks: I'll start because Mr. Mazzeo is away on a family thing, that he couldn't be here. I wasn't expecting to take the lead here, however, I think this all started first when you came to us and asked for us to write a waiver for parking and the discussion came up that perhaps it's time to bring the town into sync with what the County and

other towns in Delaware do, which is that any variance, any variance; parking, use, no matter what it is, goes to the Board of Adjustment and not to Planning and Zoning. In other words, if, for example, Dr. White up here, which Pret Dyer originally came in for it with a sub-division plan; he wanted, I don't know, it was 50 or 70 parking spots to be forgiven because they could park on the street. That's not something in the real world that Planning and Zoning should be dealing with. That should go to the Board of Adjustment first and then to us comes just the sub-division, so we make sure that we can be more attentive to technical issues and how it's laid out and are the streets going to work; are they wide enough; is there a definition of an alley; why are these garages front loaded; are we sure this is not something encroaching on wetlands; is there an architectural aspect or an archeological aspect to the land that needs to be considered? Those things, but all variances should always go to the Board of Adjustment. That's the way the County does it, it's the way Lewes does it, it's the way Georgetown does it. It's the way most of the towns in Delaware do it and I think that our Code needs to be fixed, so that that's done. We need to remove any references in the Zoning Ordinance to parking being forgiven by Planning and Zoning and we need to amend the part of the Board of Adjustment, because it says area variances and they do variances beyond area and that's throughout the United States, wouldn't you agree Mr. Thompson?

Seth Thompson: Yes. Ms. Weeks is correct that the more typical scenario in our areas municipalities, is that the Board of Adjustment would deal with variances and it's important to kind of get our terminology correct; that most people think of area variances as being a physical dimension. The easiest one to think about is a setback, so if somebody's encroaching the setback, they need an area variance in order to get that approved that they're allowed to build within the setback. There's also the Special... some towns called them Special Use Exceptions; you call them Special Permitted Use, or Special Permitted Exceptions, one of the two; but that is typically more something that a Board of Adjustment would deal with. Your Code has it set up where that goes to Planning and Zoning. That was a decision that predates me, so I don't know why the thought was... it could be that you didn't have a Board of Adjustment or they didn't meet very often; I don't know.

Virginia Weeks: I believe the Board of Adjustment was founded well after Planning and Zoning was and perhaps that wasn't cleaned up at the time.

Seth Thompson: But Ms. Weeks is correct, that normally you see the Board of Adjustment dealing with those Special Permitted Uses, as opposed to Planning and Zoning. Planning and Zoning is more of an administrative quasi-judicial reviewing body typically, that they use their land use knowledge to make sure that things fit properly, but it's not really that judging element that you get from a Board of Adjustment, where there's a standard and you judge the application and figure out whether it fits within the community; whether it has a detrimental affect to somebody else; that sort of thing. So that is something that's different about your Code than other municipalities in the area.

Virginia Weeks: The other thing is, also, if it goes to the Board of Adjustment, they can grant the variance, but they can also put conditions on the variance. For example, they can demand a certain amount of screening; they could demand that hours of operation... Let's take the Blue Iguana when it first opened up. That came to Planning and Zoning for a special exception. A special exception for a restaurant meant that it was permitted;

but it had to come to Planning and Zoning at the time, when it should have really gone to the Board of Adjustment to look at the intrusiveness of a busy business like that and at that time, Planning and Zoning or the Board of Adjustment would have looked at it and they would have said fine, where's your dumpster going to go? It's going to be seen from the street. You need to enclose that so it doesn't look like a mess. Where is your exhaust fan? Where's your Fryolator fan going ? Is it next to somebody's bedroom window? What is the vibration on your refrigeration? Is that in an alleyway between yourself and a house or somebody's apartment? And the Board of Adjustment could have said you need to have this so and so, or you need to move your... we need to see how you're going to silence this or the other thing and they can put those conditions on it and those are important conditions, because they're the small things that make a town livable. The use was always permitted. It was a special exception so those sorts of intrusiveness could be addressed, if needed. And that's something that the Board of Adjustment should be doing, not Planning and Zoning.

Seth Thompson: Going back to the parking waiver issue, as well; one thing that's important, I suspect that when the Code was drafted, the reason they gave it to Planning and Zoning; it sounds like if there wasn't a Board of Adjustment it made sense to go to Planning and Zoning, but also if you're going through the site plan process, I imagine there was a concern where you wouldn't want to send somebody to the Board of Adjustment to deal with the parking issue and then also after they get their parking variance, then they have to go to Planning and Zoning in order to go through the site plan process. Maybe there was some thought that well let's just have this body that's already dealing with the site plan, also deal with any sort of parking waiver. I don't know that to be the case, but if the theory is that they're getting a waiver from what's otherwise required under your Code, I think it is justifiable to say you need to go to both bodies. The only problem is, you don't want things to take too long. I understand that's a real concern, because the Town does want to be business-friendly.

Virginia Weeks: Exactly, but on the other hand, somebody who comes forward and is ready to go to these boards, has already been working for two years. This isn't something he's done in a day and there's no reason why the Town, when you're going to give a variance and give him a special privilege, shouldn't take the time to review it and see if it's proper. I think that to say, no we're just going to waive this so you don't have to wait, might not be...

Vice Mayor Booros: I think to assume somebody's been working on something for two years, is a pretty broad statement. There are people that haven't been working on something for two years that decide they want to open a business in this Town and time is time; but quite honestly Ms. Weeks, my problem was I'd never attended a Town Council meeting and then I did and when the Planning and Zoning and I'm not saying the members of the Planning and Zoning, I'm talking about the process, not the members, the process, the support that they got... when you're bringing an engineer into this thing, that you're paying by the hour to come to a Planning and Zoning meeting and a lawyer to come to a Planning and Zoning meeting and then to be told, oh, you don't have those 18 questions; would you like to come back next month? That's unacceptable. I've seen that happen twice and it wasn't the people on the Committee that were the issue, I'm just saying that it's an issue and either the process is flawed, but nobody

should have to pay an engineer to come back again next month, because the process is flawed.

Virginia Weeks: First of all, I was referring for two years, when somebody's coming in with a sub-division, not a business. I was talking about the specific case of a sub-division there, not the business. Second, I agree with you that it shouldn't take that long, but to change the process so you can let it go through when you don't have the information, doesn't seem the way to do it. Just by saying, we'll do this quickly, you still don't have the information you need. The problem is not on this Board, it is not with how we do it, it is with the fact that maybe Town Hall doesn't get us what we need.

Vice Mayor Booros: That's a very good possibility.

Barry Goodinson: I apologize for being late. I think we had asked for this meeting, because I think there were a couple of issues. One is kind of on the process level. Who does what? There's also on the individual level and what talents are brought to the table and I think what's happening here is, we've heard we've got Planning and Zoning, we've got Town Council, we have the Board of Adjustment, but no one seems to know what each of those tools is used for, so you're kind of rifling through the tool box and grabbing whatever tool's available and throwing it to the job at hand. First of all, it takes a lot of time. It's also not fair to the public. They should know exactly what to expect when they enter into this process and therefore, the system will work quickly for them, but right now it seems to me that we don't have a clear understanding of the responsibilities of Planning and Zoning, of Town Council, of the Board of Adjustment group vis-a-vis these particular projects, so we want to sort through who does what; if there are things that don't make sense, let's fix it. If there's redundancy, let's get rid of the redundancy, but let's not get rid of the tools that are at our disposal, by changing policy, because then that gets rid of all of our tools and we've got nothing to work with and that's the concern that I have. The other reason I think we asked for this meeting, is there's not a lot of communication between Planning and Zoning and Town Council, so what we know about Town Council, is basically what we read in the Cape Gazette or what we hear in the Milton rumor mill. With all due respect to the Cape Gazette, neither one of them are the best sources. We need to have all sources available to us and that means talking to one another as people who respect one another, have clear lines of communication and then also knowing what we each bring to the table, so I don't know your backgrounds, so I don't know if I have a question about financial stuff, who do I call on the Town Council that might have a particular expertise. You don't know what we bring to the table, what we have in our professional past, our personal past, that we can bring to the table and we should be resources for you, as well. We're just not doing that, so that's the other reason we asked for this meeting.

Councilman Collier: Not to go backwards in the conversation, but let me give just a little history lesson, seeing as how I ended up being the Chair of the first Board of Adjustment that was ever appointed in the Town of Milton and some of the things that Ms. Weeks describes that should be duties of the Board of Adjustment, were once considered their duties and as I remember correctly at some point in time, when they were rewriting the Zoning Code, at the recommendation of the then Town Engineer, they reduced significantly those duties and I must remind you that when the Board of Adjustment renders a decision, it's a binding decision. It's only challengeable in a Court of law. As a

Planning and Zoning Board, you can make a recommendation, but the Town Council has a perfect right to overrule that and that's why I think sometimes you get the waiver things, because it may be a case where Council doesn't necessarily agree with that, but if the Board of Adjustment says absolutely not, no waiver on parking, the only recourse that the individual asking for that waiver has, is to challenge it in a Court of law. Just keep that in mind when you start handing over all these duties that you think maybe should fall on the Board of Adjustment, because now you're putting that in the hands of five people; I believe it calls for five people; and they can make a decision that may not necessarily be the right decision and there's not a thing that anybody can do to change it.

Barry Goodinson: I have a question. Who appoints them? They should be the right people to make the right decisions, so if we don't have confidence in that board, then the answer is not to ignore the board, the answer is to populate it with people who have the expertise this Town needs.

Councilman Collier: I think that for the most part, that you have that situation exists on all of your Boards; but just related to my own experience, I know that there were a lot of difficult decisions and there some unpopular decisions that we made and sometimes they were based on nothing more than a simple little thing in the Code, but it was within the Code and as far as I know, I'm pretty much aware of what everybody brings to the table, because when the Mayor makes a recommendation for an appointment to these Boards, she gives more or less a synopsis of your background and where you come from and I have the ability to either say yea or nay as to the appointment. That doesn't mean that it's going to change it, but nonetheless I'm aware of what everybody brings to the table to some degree. I don't know the length or breadth of your expertise, but I'm certainly aware somewhat of what your background is. As a council person I don't attend Planning and Zoning meetings. I've always been of the opinion that that's not the right thing to do, because you get influenced maybe in the wrong direction. The time to make that decision is when it comes before you, not during the process that Planning and Zoning goes through. For the most part, I have to tell you, from where I sit, the way I see it, Planning and Zoning is an advisory board and everything that you recommend, is something that we take under advisement and as a council person we have to try and view it in the broader picture sometimes, if that's possible and I have to tell you for the most part, I find that I agree with Planning and Zoning on most of their recommendations. I think that they've done a thorough job and everything else, but there might be that isolated incident. Please don't take it to heart. I will certainly give you my reasons for voting to the contrary. That's my place to do it, so I'm not sure why this... for lack of a better term "rift" between the two bodies exists at this point. I'm not overlooking your abilities. I'm not being judgmental on what you can and cannot do. I'm willing to sit down and listen to it, of course you have to take the glass half full/half empty approach. I have to look at it from the side that you're looking at it from, as well as you have to see it from my side. Nonetheless, just be very careful when you start saying we should give this to the Board of Adjustment, this to the Board of Adjustment, this to the Board of Adjustment, because you may start giving decisions that you may not want to be at that state.

Linda Edelen: Board of Adjustment issue I think is an extremely important one and it appears that it's being moved forward. The issue that I have a concern about, is the



proposed amendment to the procedures having to do with when does the Council refer an item to the Planning and Zoning Board and I'm talking about 220-98 and 220-99. As I stated at the Council Meeting I don't see that there is an inconsistency between the two provisions. My reasons are that as it was drafted, although they used the word "motion" rather than "initiative", a motion is in fact the procedure under which the Council exercises its initiative and if the drafters wanted the Council to be excluded, as it appropriately excludes the Planning and Zoning Board, then they would have added that exception and they didn't, so if, again, there is no reason to amend that provision, or those two provisions, then we need to talk about why the Council, or I would like to talk about why the Council is pressing to do this. What is it that you would like to change, because in fact you are significantly changing the due process; when you keep for yourself certain issues and don't send them to the Planning and Zoning? What is it you really want to accomplish and are there ways to do it without using perceived inconsistency to do that? We would like speed, as much as you would like speed, if in fact, that is the issue. But speed is not always the best thing and we are, as a Planning and Zoning Board, compelled by law to approve and send to you under advisement, those applications that come before us that meet the criteria. My experience with this Planning and Zoning Commission is we don't act arbitrarily. We look at what's before us and it is non-confrontational; it is non-political. If an applicant comes before us and is supposed to have A, B, C and D and it has A, B, C and D, we pass it; but if he doesn't have C, then we don't have an alternative except to send you back and the next time we meet, is a month from now. That's a terrible detriment, but we didn't cause it. The applicant did, so how can we, if in fact speed is an issue?

Barry Goodinson: I think, again, I'm just reiterating the question. What is it you're trying to accomplish? If speed is the issue, then are there other ways to speed the process? Because my understanding and my experience since I've been on Planning and Zoning since the beginning of the year, has been things have slowed down when there have been problems at Town Hall with staffing issues; things have been kind of slowed down when we come together and there's not information that's been prepared in advance and we don't have answers to those questions and we can't exercise our responsibilities and leave those questions unanswered. We just are not going to do that. So I think those are issues. I think there's some training issues. I think there are some personnel issues that need to be addressed. Those are not corrected by changes in policy and law; those are changed by supervising staff; speeding things up; being clearer with the consultant's that work with us; perhaps maybe renegotiating those contracts to make sure we have deliverables that are going to provide us with the tools that we need. Again, that's not changing the law or changing the rules. If something comes to us that requires an additional meeting in between these meetings, we're happy to have these additional meetings. Once a month is not an onerous responsibility. We're happy to come together more frequently than that.

Vice Mayor Booros: Have you ever, since you've been on the Commission met more than once in the same month?

Barry Goodinson: I don't believe we have. No.

Vice Mayor Booros: Has anyone that's been on there for the last year, tell me if you've met more than once in the same month?

Tim Nicholson: No, not that I'm aware of.

Vice Mayor Booros: No. That is exactly the issue is speed and when you're telling somebody to come back in a month, because we can't pull it together in nine days to announce it in the paper again, to get whatever that is that's missing. That's speed. One month leads to another month, leads to another month, leads to another month. Barry, you've said it. Come back in less than a month and Mayor Jones has called us back how many times in a month to go over issues; untold times in a month to go over issues, just so that we could announce it to get the FOIA requirement out there to come back to do it again.

Barry Goodinson: And I think the answer to that question is when we've raised the possibility of meeting more frequently, there have been questions about the FOIA and the publicly announcing it and all of that stuff.

Vice Mayor Booros: Seven days.

Barry Goodinson: And frankly, what we've heard is at the Town Hall staffing level that it's impossible to do, I can't get it done in time. That's a sticking point.

Virginia Weeks: Question for Mr. Thompson. Mr. Thompson if we're in a meeting and we find that we don't have all the information that we need, do we need to re-advertise that meeting or may we recess the meeting for a week?

Seth Thompson: You can't recess the meeting. You would need to re-notice it under the seven days.

Virginia Weeks: Because in New Hampshire we could recess it, so I was just wondering.

Seth Thompson: Typically under Delaware FOIA you can only recess a meeting if you lack quorum, basically; then you could recall your meeting. You could recess it for other purposes if a meeting went too long, but you would need to come back that same day. You couldn't recess a meeting and then pick up the next day, basically. It might be helpful to think about the process with an application in mind, because we were talking about the process for amending our Code and that's really a legislative function. That's where the Town, whether it's Planning and Zoning or the Council, you're serving a legislative function so you have a broader amount of discretion there. I think it's important to keep that in mind and to keep that separate from when you're analyzing an application and that's because that isn't really a legislative function; that's somebody that owns a piece of property or leases a piece of property and has the expectation of being able to apply to the Town and go through the site plan process or whatever process they're going through, with some level of expedition. Again, that's an administrative, quasi-judicial function typically, so the one area that is difficult, I imagine from Town staff; I've seen it in other municipalities, is for instance on a site plan application, your Code allows Planning and Zoning to waive requirements that it feels aren't necessary for that particular application, but in order for Planning and Zoning to waive those requirements, you'd of courses have to have a meeting; so just that concept in and of itself, places I imagine the Town staff in a very difficult position, in the sense that Mr. Davis, or whoever is in charge of accepting the application, has to say well this may or may not be complete, depending on what Planning and Zoning... if they're indeed going to waive this other requirement. Really it can be a multi-step process because of that. Mr. Davis might tell the applicant you don't have everything on your site plan or everything that's required under our Zoning Ordinance; but you can ask Planning and



Zoning to waive that, but you're going to have to go to a meeting and they're going to have to decide that and if they decide no, we want that, then you're going to have to come back the next month with your application, having that information that they didn't waive. So perhaps we could do a better job of making that clearer to applicants; that if you don't hit every box on that checklist, you might have to come back. They are taking a chance when they do that.

Vice Mayor Booros: But if the Town misses those check boxes and then to tell them to come back in a month, that's a sin. That is my problem. The Town messed up. I'm not saying the people on this Committee, the Town. First thing out of this Committee's mouth was would you like to come back next month? It wasn't hey Town, can you get this thing for this man, so that he can look at this and maybe we can get back together, look at your calendar... can we get back together in ten days? That's my issue and I sat through two meetings where that's exactly what was said. Would you like to come back next week and the guy said no, give me five minutes to go over here in the corner and look at this stuff and do it. It wasn't anybody on the Commission's issue; it was a Town issue and the solution wasn't let's try to get this done expeditiously so that this person doesn't have to pay an engineer to come back here in a month to answer these questions; it was how quickly can we get this done? It was no, can you come back next month. That's my problem. Not with anybody at this table, with the process. Why couldn't we get together in 10, 15, 12 days, everybody look at their calendar and get this moving.

Barry Goodinson: And I think we're saying the same thing. I think we're as frustrated as you are at the slowness.

Vice Mayor Booros: That's all I'm saying.

Barry Goodinson: When we've had to send people away and say come back in a month because this little piece is not available to us and we're this close to making a decision, but we legally, or at least ethically, can't make that decision because we don't have that last piece of information; we don't want to see it again; we want to be done with it and let these people move on with their project and we can move on to other things. So we're not happy about that either. The problem is, it's a staffing issue and it's a culture issue and it's kind of like, nope, sorry you didn't get it right, back to square one and come back to us again. We're being... This Commission is not being well served, but I don't think it's a rule change or a legislative change, or whatever you want to call it, that's going to correct it. It's going to further tie our hands and we're going to... I said this recently, that people come to Milton because they see the great potential here and the potential that they see in Milton is the stuff we haven't screwed up yet. If we tie our hands and screw up stuff, we're going to give away the potential we have and we're not going to have any. So we need to really protect what we have. We need to do it expeditiously, but we still have to protect what we have. But I'm telling you, I think it's a culture issue and it's a staffing issue.

Seth Thompson: The other element, very often Planning and Zoning needs to have approvals from outside agencies. I suspect and I think I've seen it on more than one occasion, where the Town goes ahead and puts an item on the agenda with the hope that the outside agencies are going to get the approvals to the applicant and so it comes off poorly for the Town in that it looks like the Town said, oh I'm sorry we put you on the calendar and it turns out we can't approve your application because you don't have

DelDOT's entrance permits or Sussex Conservation District's approval. Technically, the Town probably shouldn't put it on the calendar until they have all those things. I think really the Town is trying to do the applicant a favor and give them a window where they might receive those things, but it does end up to be a little bit of a mess if those outside agency approvals don't come in, well lo and behold we noticed a meeting; the engineer is here; but we don't have everything, so we can't consider your application complete. I guess that is somewhat of a staffing thing. The problem is I think the staff has to make a decision, do we just tell these people no, I'm sorry you don't have all of your approvals, so we're not going to put you on the calendar, call me when you do and maybe that is the better answer. I don't know. The problem is that you have to apprise them of that opportunity where if the next day they get DelDOT's approval, they could be on the calendar.

Barry Goodinson: I think what you've said is really important, because if other government agencies aren't doing their job, or aren't able to get it done fast enough, and we imply promises that we're going to handle this and then at the end, they don't deliver and therefore we can't; we're the ones that get left holding the bag and we're the ones that it's perceived that there's a problem with Milton and if the problem is with the County or with DelDOT, but we end up taking the bullet for it, it's not good for this Town; it's not good for attracting business, so perhaps maybe we do need to talk to the staff and say you know what, I know you're trying to help people out and speed things up, but we can't imply things that we can't deliver; so tell them to come back when they've got a full application ready. Again, we're going to look like the idiots.

Vice Mayor Booros: I can't imagine that every other municipality doesn't have the same problem with the Fire Marshall and DelDOT and everything else, so I don't think that's the issue and I think Mr. Thompson, it's possible that Town Hall could say if you don't have this before the eight days before we notice it, tell us, because we're not going to put you on there, or you put them on there and you just don't have them that day. If it's not there, they're not on it. You can put them on there for next month, that doesn't mean they're going to be there. If you don't have it in your hand, don't even bother coming in.

Virginia Weeks: We have a particular problem in Milton in the fact that our two streets where development and business occurs, which is Union Street and Federal Street, are state-owned streets and they have to be notified of any change in use. It really does lengthen and complicate the process, because once they're notified of a change in use, DelDOT wants to look at it, this one wants to look at; the church wants to put a parking lot; well that's great, but you're going to have to notify DelDOT and they're going to want 30' wide curb cuts on Federal Street. Is that what you want? There's all those things that come into it and it's out of our hands. It's out of our hands.

Seth Thompson: I just looked under the Code, it's Section 220-35(i). Indeed, when it comes to final site plan application, it says that the applicant really is supposed to have all of the approvals for all necessary permits and curb cuts from responsible local, county and state officials before they submit their final site plan application. That really should happen ahead of time. I have a feeling the Town has been trying to help people and unfortunately, I think Barry's right, that the Town ends up looking like the bad guy.

Virginia Weeks: Just for a minute, getting back to the waivers and variances and so on, I would like to point out that in the Delaware State Code, Title XXII, the Board that is

empowered to give variances and to decide special exceptions in Title XXII, under Chapter 3 and it's the Board of Adjustment. It is specifically designated to them under Determinations of the Board, number 327. I have no idea if we can do things differently then as empowered by the State.

Seth Thompson: That's an enabling statute, so it's just like under our Town Charter, the enumeration of powers, so basically that's the State Legislature telling the Town if you want to have a Board of Adjustment, you can give that Board of Adjustment these powers. You don't need to have it in your Charter, it's in the State Code, so that's enabling Town...

Virginia Weeks: But does it allow another Board to do that? They don't enable the Planning and Zoning to give variances.

Seth Thompson: Well, right, but that same chapter, Chapter 3 in Title XXII, allows the Town to adopt a Zoning Ordinance and the way yours has been structured, you've given that power, the special permit power, to Planning and Zoning. So I think it's defensible either way. I completely agree with you that most people are used to that going to the Board of Adjustment.

Virginia Weeks: I just want to make sure that things are done the way they should be.

Seth Thompson: The other item that often the Board of Adjustment is used for, would be appeals from Code Enforcement Officer or something like that, so that's kind of what you think of when you think of the traditional Board of Adjustment, area variances, special use exceptions and appeals from Code Enforcement Officer or building official sort of thing.

Virginia Weeks: And the only other thing I have to say is I know that you're going to look at changing "shall" to "may" and I think that's something that you really need to think about, because it could be throwing the baby out with the bath water. It removes the ability for a double-view. It's a checks and balances and if you remove that, you give the total power to the Council and that might be fine with this Council, because you all like each other and you think it's terrific, but if you get an antagonistic Council, or you get a Council that is very politically driven, or has an agenda, then how do you protect the Town? There is no other voice but the Council. If somebody comes in and wants to change a district, or wants to get out of Historic Preservation or they want to change the uses in a certain district and that Council says okay let's do this. This is good. We know him, he sells eggs down at the local market. This is good. He's a good bud, let's do it. There's no check and balance, whereas if you send it to Planning and Zoning you've got two groups looking at it and that's a good thing.

Linda Edelen: Along that line, one of the difficulties I would see if I were on the Council, would be what criteria do I use to decide whether it's going to go or it's not going to go; then I sent this to the Planning and Zoning Commission and I have another one, almost identical to it, and I'm not going to send it. Well, you've got a lot of confusion on the people that are asking you for something, if you don't have... we keep it if it covers this area, we don't pass it on, or we do pass it on if it's... I don't know how you answer that. I don't really think there's an easy way to answer that without setting a precedent and creating a great deal of turmoil with the process.

Barry Goodinson: I agree. I think that having the "shall" in there is important. Again, because it's clear that people who come to this Town and bring business and present it to

the Town and ask for some determination, know what to expect. If they have a “may” in front of them, it could go this way or it could go that way and I just don't think it's fair. It could open the Town up to considering things unevenly and I think Ginny's point about it may be perfectly fine for this Council, but maybe subsequent Councils don't have the expertise or whatever to make these decisions. And finally, I think I have never had an idea that wasn't improved by other people's input and I really appreciate it when I come up with this part of an idea, and people come in and add to it and change it and fine tune it and I think that getting rid of the “shall” removes those opportunities. We don't know what we don't know and it's a good thing to learn about what we don't know and I think you need to leave that option available to you.

Vice Mayor Booros: Okay, so let's say I'm going to agree with you on this one. I guess my problem and you said it, people when they come here to open a business, know exactly what to expect and if you look at the last 6, 7, 8 years, they don't come here to open a business Barry; they are not coming here to open a business, because they do know what to expect and if you hear it on the streets and you hear it from business owners and you hear it from real estate agents, they know what to expect. Milton has never been business-friendly in the last however many years it is. We're trying to be business-friendly. Kristy Rogers and Robin and I went to a thing up in Dover last week and it was sponsored by the University of Delaware and the big thing, for eight full hours, was about rolling back your Ordinances. People don't want a half acre lot with a single family homes anymore. They don't want it. It's one of those things where we've got these Ordinances in place from way back and if you're not having a half acre lot with a thing, then you've got to get a variance, and you've got to do this. Parking spaces. I sat in one meeting where you say can't you give up a couple of parking spaces and put a couple of trees in? Well then you're limiting the guy's possibility of having a doctor's office. They specifically mentioned that one about parking spaces. Roll back that Ordinance that doesn't require 12 parking spaces for a doctor's office and put in two trees. Our Ordinances, and I think that's what Councilman Collier's Ad Hoc Committee is working on, is looking at these Ordinances, but this was an eight hour thing up there at the University of Delaware, Hal Godwin was one of the participants on the panel and I think everybody in this room would benefit by seeing it, if it's available on video. It would have to take a couple of days. It was wonderful. Different panels for different things. Then Councilwoman Parker-Selby and I were in attendance at a thing over at the University of Delaware and it was on bringing businesses into the area, education, keeping our kids here, getting them educated and they have something every Wednesday morning at the college called “A Million Cups of Coffee” where they have a different entrepreneur speak and they're all these people talking about well we're in Selbyville and we just bought this company here and we're here and we run... That particular day one of the speaker's was Mariah Calagione from Dogfish Head and it was about the hotel/motel that they bought in Lewes and there are different entrepreneurs, but it was all about rolling back your Ordinances to make your place more business-friendly and we need to really, really look at that. I know Councilman Collier is. I just wish everybody had had an opportunity to attend that a few weeks ago.

Virginia Weeks: If I may, I would like to point out that this Town has done that. What has happened is we have had bad mistakes and we have had very disgruntled people that

have gone to television stations and so on and given us a bad name. Under one administration here, Town Center no longer needs parking. It's not required. Parking lots in Town Center, no longer need to be paved, so that because there was a fellow who wanted to open a business and he didn't want to have to pave and this, that and the other thing. I mean we have rolled back our Ordinances in the business section.

Vice Mayor Booros: Not enough, I don't think.

Virginia Weeks: What more?

Vice Mayor Booros: The number of parking spaces required for a doctor's office up on Route 16.

Virginia Weeks: At that point, supposedly Planning and Zoning could have waived it and still gotten the trees.

Barry Goodinson: I lost that vote.

Vice Mayor Booros: You sure did.

Barry Goodinson: And it wasn't because it was not allowed. It was because we didn't have the information available to us, the question was, will DelDOT allow trees? I don't think so, so everyone said oh well if DelDOT won't allow them, let's just vote no. I subsequently called DelDOT and they said sure we would have allowed trees. But it was too late, so it's another example of us not having the information available to us when we need it to make the decision. So it's not an issue of rolling back the Ordinance. I think rolling back the Ordinances is a nice catch phrase and I think it speaks to a climate of user-friendliness, but I don't think that you can apply that too broadly, because where do you stop? I think we have some flexibility here. That wasn't an Ordinance that prevented the planting of trees, it was a lack of information.

Vice Mayor Booros: I'm not talking about the trees, I was talking about the number of parking spaces. They weren't willing to give up two parking spaces, because a doctor's office couldn't use it.

Barry Goodinson: No, I asked them to give up seven parking spaces and landscape the entire front facing Route 16 and they said, no we're going to need those spaces... we're going to need some of those spaces in case we have a doctor's office. I said, okay, I don't want to prevent you from having a doctor's office here, how about giving up two spaces, you'll still have enough spaces for the doctor's office and that's when we were told that DelDOT will not allow this and we all said well DelDOT won't allow it and we lost out of an opportunity to properly landscape Route 16 and we blew and we blew it because we didn't have the staff information. It had nothing to do... We didn't have the staffing, we didn't the information and we blew it and it had nothing to do with Ordinances.

Vice Mayor Booros: All I'm talking about is the doctor's office. I don't care about the trees right at this moment.

Barry Goodinson: Right. No, no, no...

Vice Mayor Booros: A doctor's office shouldn't have to have twelve parking spaces.

Barry Goodinson: I agree.

Vice Mayor Booros: That's what they were talking about. So it says twelve. So it's eleven parking spaces. Somebody's going to have to wait until somebody pulls out. He's going to keep you waiting for two hours anyway and that's what this whole conference was about that day and all I'm saying is it was very informative. All the different municipalities were there. They were showing how not annexing in land around you was



causing a problem and you end up with small towns that didn't annex in and now the County has allowed everything right up to their doorstep and what a problem that is, by not annexing and loosening up maybe your fees for annexing, to get the people to annex, before the County allows them to do whatever they want to on your doorstep. You lose control of your surroundings. There's a lot of issues that the Ordinance just needs to be looked at. Councilman Collier is looking at that.

Councilman Collier: For the record, the Committee which I chair has not been tasked with anything to do with the Zoning Ordinances.

Vice Mayor Booros: Then never mind.

Councilman Collier: We just have the Charter and the Town Code and I didn't want that to get any further that it's gotten in this discussion.

Vice Mayor Booros: Okay, it works for me.

Barry Goodinson: This is more of a question that kind of goes back to what are the resources that we have to bring to this process? What I'm seeing is, what we don't have is some type of place, in between when an applicant comes to the Town with an idea and plans and then they come to us; somewhere in the middle there, there has to be someone who says you know what, you need to do the following things to tweak this. I think we've got someone who might say do you have this form, do you have this form, do you have this form? But I think we need someone that's more on the macro, or more on the planning level, so we could say to a property owner or a business owner, I think this is a great idea. What would make it even better is if you tweak the plan a little bit, because I know the Town wants to have more trees and if you put some trees in here, they may ask you to do this. This is just going to kind of sweeten the pot a little bit and make this a much attractive application. We don't have anyone doing that type of mentoring, advocacy, planning, hand-holding, that would really significantly improve the projects that come to the Town Council and that come to Planning and Zoning.

Vice Mayor Booros: And possibly speed up the process.

Barry Goodinson: Absolutely. Absolutely.

Seth Thompson: It's interesting. Part of that, I think, is why as I like to say the heavy lifting is supposed to happen at the preliminary phase and that's really why the Town has that two-step process. I'm thinking of site plans, just kind of as an easy example. I suspect the Town staff doesn't like to get too involved in making recommendations to applicants, just because that puts them in an awkward position, in the event that they get in front of Planning and Zoning and Planning and Zoning says this is a terrible idea. Why in the world did you do this? So I have a feeling that's what's holding town staff back. The other element too is whenever you have a public body, it's always shifting and so what one public body might like, might be very different the next year and so I think that's probably, in part, why town staff hasn't been willing to be more involved in the initial process. We potentially could do a better job of spelling out those options in the preliminary site plan phase. It's interesting too, because we kind of have been talking about two different tracks, as I see it. It sounds like Vice Mayor Booros is looking at changing the Ordinances, so in other words changing the rules and perhaps loosening them up so that businesses feel more comfortable coming into town. They know they're going to be able to do X, Y and Z and that...

Vice Mayor Booros: And streamlining processes.

Seth Thompson: That's right and so the second part to that is that here are the rules; everybody knows the rules; now I can expect to get through the process within X number of months. Going through the process, itself, isn't the issue in terms of the Ordinance changing "shall" to "may" in terms of the recommendations; that's just for the Ordinances in terms of how we would amend the rules or how we would amend the districts, basically. So I think it is important to kind of keep those two things in mind, but the "shall" to "may" isn't an issue of whether or not the process is going to apply. We're not talking about changing the process with that "shall" to "may". Now we are talking about it tonight, obviously. I think it's important to keep that distinction in mind that the changing "shall" to "may" isn't changing the site plan process as it's currently constituted. We might want to do that, but just thinking about that, we're not making it a site plan process, or the sub-division process discretionary.

Barry Goodinson: I think that's kind of at the macro level that I think Councilman Collier had said that we are an advisory group and we'll listen to you and then we'll take whatever you say under advisement. I think there's got to be an understanding that... I think there's got to be two understandings. One there's got to be a shared understanding of the vision of this Town and I would love to talk a little bit about the Master Planning process, because I think that's critical to this conversation. We can talk all we want about Ordinances and all of this stuff, but unless we talk about the vision in who's service these Ordinances are working, then it's kind of a stupid thing to do. So I really want to talk about that. We have to have a shared vision that people buy into and everyone can sort of recite and it's part of our DNA on a daily basis; as we do our work here, but you guys have to have the confidence that when you punt a project over to us that we've got the shared vision. We're working on your behalf. We're working in concert with you and we have the expertise here to do our job and where we don't have the expertise and where we don't have the information, we have resources available to us so we can get that information. I'm a little concerned about the larger culture of well we may punt things, ordinance changes, over to Planning and Zoning and we'll ask for your opinion when we want it. I really want to make sure that we're all pulling in the same direction and you guys have the confidence in this relationship and this expertise, to know that when something gets sent over to us, we're going to send you back something that is worthwhile and thought through.

Virginia Weeks: I'd also like to make another point. Do you think it's beneficial for the Town to have a set of procedures or ordinances such as you want with removing the "shall" and making it "may"; that when somebody's approaching Town Hall, they have no idea whether or not they're going to go to Planning and Zoning. It depends on how you're feeling that day.

Seth Thompson: I think that's the important distinction, maybe I didn't explain it well. When Councilman Collier is talking about the recommending body, we're talking about amendments to the rules. We're not talking about...

Vice Mayor Booros: Approval of a plan.

Seth Thompson: That's exactly right. So that's what I wanted to make clear that at least what we're talking about with that ordinance, it's not going to affect the site plan or sub-division.

Virginia Weeks: Exactly, except that recently and I'm not even sure it was legal, that we

switched restaurants from a special exception, or a special use, to a permitted use because somebody may want to open up a restaurant. Well is that how the Council wants to be viewed? That you could go to them and say look, I'd really like... but I don't want to have any problems. Oh, okay, wait a minute, we'll take it away from Planning and Zoning and we'll do this for you, for you we'll do it this way. Is that what you want? Because that's what is showing. If I were a businessman, I can't be sure of how things are going to be treated in this town any longer. I can't be sure what's going to be required of me.

Seth Thompson: It's an interesting conundrum there, that I think it would be great if the town really sets out and takes a global view of its zoning ordinances and sees what makes sense and what doesn't; because, really, especially your zoning map obviously, is supposed to be a living document that as things change, your map's going to change. If you grant a certain number of Conditional Uses or special use exceptions in an area, it seemingly hurts the notion that that isn't an appropriate use in that area any more. If you have seven restaurants, just to take an exaggerated example, well wait a second, everybody knows that's the restaurant district, so to speak; so why should it be a special use exception, when all the other neighbors are restaurants? That kind of thing. So it would be helpful to have the town take a step back and take a global view. The difficulty with doing it piecemeal, is that you kind of end up with this hodgepodge that might not make sense; the problem is investing the time and the resources and taking that global view and also the reality is sometimes you just... it's very difficult to envision all the different scenarios that you're going to run into, so occasionally it is a reaction to one particular issue that causes you to look at your ordinance. I would love to say that the town and I are wise enough that we could envision whatever problems are going to happen, but unfortunately that's not the case. But it would be good to take that global look, instead of being viewed as changing the rules to benefit one person and not another, that sort of thing. Obviously you want to avoid that scenario. It's also the reality that occasionally somebody comes and says, hey this is very out-of-date and this should really be changed and there is that direct impetus sometimes.

Virginia Weeks: And that is deserving of a conversation. If somebody comes and says you've allowed so many Conditional Uses in this residential area, that this is no longer a true residential area. Then the conversation needs to be, should we rezone that area. Absolutely.

Seth Thompson: While we're on Conditional Uses, I've never been a fan of how your code says that you could have a Conditional Use anywhere, for anything. That to me brings an element of uncertainty that I wouldn't like as a neighbor. I suppose if somebody is going to look at the zoning ordinance overall, that would be a good place to put a check mark and make sure that that gets highlighted, because the thought of somebody coming in for a Conditional Use, you could apply for a factory in the middle of a residential neighborhood technically; and now is that application going to be approved? Probably not. But just on it's face, it seems a little bit odd.

Barry Goodinson: I'd love to hear about the whole Master Plan process.

Seth Thompson: Do you mean the Comprehensive Plan?

Barry Goodinson: Yeah, the Comprehensive Plan, I'm sorry, and what the timing needs to be and what your vision is for this. Apropos of this, I was at a party recently and there

was some discussion about restaurants moving into downtown and antique stores moving out and there were some people, well this makes perfect sense. It would be great to have lots of restaurants downtown; then there were other people saying, well but Milton is seen as the place to go antique shopping. So there are these two dueling visions of what Milton's downtown is. If we had a clearer plan. If we had a shared vision, then while maybe people, not everyone is buying into that vision, at least they would know what we're working towards.

Vice Mayor Booros: Part of what we heard that day was allowing the market to set that vision and quite honestly when somebody buys a building and doesn't want an antique store that's only opened one or two days a week; what they choose to do with the building's is what they choose to do with the building. I'll be honest with you, when I first joined the Economic Development Committee they were writing their mission statement and it said to promote Bed and Breakfast's, Antique Stores, Coffee Shops and something else in the downtown district and I fought to get them to take that out of there. What if Verizon wants to open a store downtown to get your cell phones fixed. That brings people into this town. Well that's not why I moved here. Now here you have somebody that moved here eight years ago who said that's not why I moved here. On that same note, I had a former Mayor and his wife, say to me one day, they were so excited that another restaurant was coming to town and they said my God I've lived my whole life here. I'd give anything to have a Wendy's in this town, that I could just walk down the street and get a cheap burger, if I had to and those were long time residents who were born and raised here, both of them were. Nobody has the same vision and on that note and I may have mentioned it to you, Barry, when you come to the Town Council meeting and for three minutes at the beginning, everybody gets a three minute opportunity to speak, you hear everybody's vision. Trust me. You hear 30 people's vision and we're there until midnight because we've heard so many visions of what people want this town to be. One thing they don't want and I've heard it for two years now is addresses in the alleyway; addresses entering from the alleyway and for the reason of public safety and the fact that I had to make a motion to spend \$12,000 for new signage in Cannery Village, out of Town Council's coffers; so that ambulances could find the sick guy, the police don't break into the wrong house, that kind of thing and then I sat in a Planning and Zoning committee meeting where they approved 13 houses in Heritage Creek, entering from the alleyway. Not even a question. You know what their answer was? We're waiting to see how they handle this with Cannery Village and we'll do the same thing. Do you know how we handled it Barry? The Town footed half the bill.

Barry Goodinson: I was at that Planning and Zoning meeting and there are two issues there. One is what we discovered when the question of life safety issues and emergency vehicles not finding people over at Cannery Village, it wasn't an issue of signage. It was an issue that this town, the staff of this town, did not provide the data to the county's central dispatch repository; I forget what it's called; that kind of tells where these addresses are and how you get to them. It was someone who didn't send that information over and it was kind of like oh we forgot to do that, but we will get it done.

Councilman Coté: Excuse me, a member of the Ad Hoc Committee Cannery Village Signage Committee. I don't believe your comment is accurate.

Barry Goodinson: I'm just repeating what we had been told at that meeting.

Councilman Coté: I don't believe that's accurate.

Barry Goodinson: Okay.

Vice Mayor Booros: And I have to agree with him.

Councilman Coté: And you cannot, personally, somebody cannot take a solution which was developed by people walking around Cannery Village half a dozen times with engineers and county EMS people and Council even came and just drop it into another situation without doing the work of walking around, looking at it, seeing what the problems are. I will go back to your original comment is that the town didn't provide the information. I don't believe that's accurate.

Barry Goodinson: That's what we had been told at that meeting.

Vice Mayor Booros: That is what you were told. I was in the audience.

Barry Goodinson: Right. And the other issue that we stumbled upon here, is you said well we approved 13 homes; we had no choice.

Vice Mayor Booros: That's the issue.

Barry Goodinson: Because this was an LPD that had been approved long before many of us were on Planning and Zoning and every time an LPD comes to us for the next phase of approval and we start asking questions about it, the answer is well you approved it in the Master Plan, so basically, because LPD's we have given a blank check... And I always say, well what's the point of us being here, if we've already given all these permissions; we've front loaded all these permissions, why are we here now, because there's nothing to do. We can't make any changes. That's the other issue. So that wasn't an issue of Planning and Zoning. It was an issue of the way the enabling of the LPD's and there's nothing else to be done.

Vice Mayor Booros: And that's when it doesn't come back to Council, because Council voted on the recommendation of Planning and Zoning to approve that LPD and it's there.

Virginia Weeks: Council may have approved it on the recommendation of Planning and Zoning, but if it was a poor recommendation it was up to Council to decide that.

Vice Mayor Booros: I wasn't on Council then.

Virginia Weeks: I wasn't on Planning and Zoning. I will say that tomorrow night on our agenda for Planning and Zoning, one item is to discuss asking Council to put a moratorium on LPD's; so that the whole ordinance can be looked at, because it's a loosey goosey ordinance and the language is bad in it and even simple things like setbacks, within the ordinance it says refer to the density table at the back; if you go to the density table, it says refer to the ordinance. It's one of these Marks brother's things, so there are no setbacks. It's whatever the developer wants and then it says the developer can move this townhouse from here and substitute it for... that shouldn't be allowed. You come in, you get your Master Plan approved, that doesn't mean that in a year you can move everything around. That's not right to the people that are buying in the sub-division and it's not right to us. We don't have a definition of an alley. We never had alleys until we had LPD's. And we need those, because there are no specifications as to how wide an alley must be; how wide must the apron of your garage be; some of them are 3'. That's kind of silly. So I'm hoping tomorrow we'll be asking the Council to put a moratorium on it and let us look at it. Thank you. The other thing I wanted to say John, is I'm very glad that you went up to this thing at the University of Delaware. Was any thought to



given to asking a member of the Board of Adjustment or Planning and Zoning to also go?

Vice Mayor Booros: The thought was somebody had to remind me what it was and where I was supposed to be that day; so I don't have a clue.

Virginia Weeks: Why isn't that automatically done by staff at Town Hall, when these things come up? Why is it that the Council gets noticed and can go; but Planning and Zoning and the Board of Adjustment doesn't? We're the ones that get the stuff first. We need to have the same information.

Vice Mayor Booros: I agree 100% and if I can get the video, they videotaped the entire thing; if I can get a copy from the University of Delaware, I'll get a copy of it. It's not something I would want to sit down and watch at one time. It was eight straight hours, right through lunch.

Virginia Weeks: I'm not sure I want to watch a video. It's much better to be there to participate.

Vice Mayor Booros: It was well worth it.

Virginia Weeks: But the question really is, why aren't the land use boards included in this; one person from each to go up to carry the message back and, as Barry says, to put that tool in our toolbox?

Vice Mayor Booros: Good question.

Mayor Jones: I couldn't agree more and it's as if you've been reading my table of notes that I've been sharing with Kristy about scheduling our first Comprehensive Plan gathering in the month of January; training for the three largest voting boards needs to begin at Town Hall with a real clear communication, particularly between right now the University of Delaware that supplies a great deal of information to us and the board members. So I couldn't agree more with you. The only other comment I'd like to backtrack and talk about no choice. And that no choice which faces not only you on Planning and Zoning, but ourselves on Council, that site plan may have been approved administration's ago, 2, 3 administration's ago and all of us are bound; so that frustration very much put us on level ground right there. The interaction between the boards, has really needed looking at for a very long time. I like the way Mr. Thompson started the meeting, but there was no way comprehensively he could tell everything. On the types of situations that come only to Planning and Zoning and those that come to Planning and Zoning and then through to Council for further approval; those kinds of situations are very helpful to me to know exactly where the buck stops with you on which of these situations and which ones continue to come to Council after you've heard them. This one about the homes in Heritage Creek, specifically, concerns me, as we spent ten months discussing, through two administrations on how to fix the issue. I can't help but have a fatalistic view that we're going to have something along those lines as an issue down the road, when all of us along the road have given approvals. I hope not. I hope we learned from the first go-round, but I think it's ripe for it happening again. You felt bound by we didn't have a choice. You're sitting there, you're told everything meets this, this and this. I have to ask the same question. What is the point?

Seth Thompson: It's a very good question, because when it comes to the LPD, the Master Plan that might have been approved years ago, seems to have a varying degree of detail. The LPD doesn't require a large amount of detail, but if they put it in the detail,

then we you get the sub-division applications, the Master Plan is already in effect approving what that sub-division is going to look like; so I think your point's well taken. If the Master Plan has that much detail, then the sub-division process and the site plan to a lesser extent, has kind of been usurped; that review process. This is kind of a step back on the LPD, but, my vision of those from a conceptual level was that they would be used as revitalization's. I think you see them in cities, typically. We have lots of area. I think it's an interesting concept. I feel like it's a great concept in theory, but it doesn't seem to have worked. The concept is really that you allow some flexibility with setbacks, for instance, so that a revitalization project can go into an area that seemingly has already been built with areas around it. That isn't necessarily our typical situation here, so what Milton ends up with is a zoning classification that allows for flexibility of setbacks that everybody else outside of the LPD has to comply with, which is an oddity in the sense that again, it seems like a great theory. I don't know if it necessarily works for Milton. Nobody elects me, nobody appoints me, but it would be something that the Council and Planning and Zoning might want to think about, because the town has had a lot of issues with their LPD's.

Virginia Weeks: Also you have to look at our land use map, in our growth map, the area where Elizabethtown would be going; on our own map it has a zoning designation of I believe it's CR, which is mixed residential use and it's already zoned an LPD on the growth map. That allowed those developers to go to the County and say see, this is what Milton wants. They want us to have this density and did we? I have no idea, but somebody way back when, thought it would be a terrific idea, but the other amazing thing is we don't have a CR designation zoning district. We have it on our growth map, but we don't have a definition for that district. How did that happen?

Seth Thompson: So your Comprehensive Plan in the future land use map has a designation that doesn't have a definition.

Virginia Weeks: Our present Comprehensive Plan.

Seth Thompson: Right. Right. But it's the future growth plan in the present Comprehensive Plan.

Virginia Weeks: It has a zoning designation that doesn't exist.

Seth Thompson: Is it in the...

Mayor Jones: County.

Virginia Weeks: It's on the map.

Seth Thompson: Is it defined within the body?

Virginia Weeks: No.

Seth Thompson: Because that's the other important thing. With County Comprehensive Plans, the maps are what have the force of law; with municipal Comprehensive Plans the wording also has the force of law; so it's important what you write in those paragraphs. I know a lot of people think of them as fluff and trying to just spin a nice picture of the future, but that ends up having the effect of law, just as much as a map, when it comes to a town Comprehensive Plan.

Virginia Weeks: So it's important to get started on the Comprehensive Plan because like many things, like our ordinances and I'm sure you're finding with your Codes, little fixes such as "shall" to "may" have become problematic, because you don't see the consequences of changing this piece, unless you look at the whole macro part and what

is this really going to do? The Comprehensive Plan has been carved out also.

Mayor Jones: I hear your point about the “shall” to “may” and I’ve had this conversation with you prior. Though we may not see eye to eye on that, one of the things that we have talked about in necessity as we go forward are the appropriate boards needing to review these ordinances, these changes that the Council wish to make, as living documents. Just because they are set in whatever the last year was that this was approved, I think it's 2009, does not mean it doesn't need looking at again. For example, in our Town Center the restaurants that we presently do have, as special Permitted Uses did come before Planning and Zoning to get that taken care of. Is it time to say restaurants are part of a normal fabric of the Town Center and ought to now be a Permitted Uses? So starting that dialogue is good, but again, it's living documents and I think some of the things we're not paying attention to need to start; is to have these reviewed on a more normal basis.

Virginia Weeks: Yes, but you're taking the power of making sure that review occurs, away.

Mayor Jones: Not the review in the whole, no.

Virginia Weeks: No, no, no, anything little thing you want to change, you will be able to change.

Mayor Jones: I'm sorry, the correction is the Planning and Zoning taking a look at the ordinances as a whole, not just piecemeal.

Virginia Weeks: But why, because the Council on whatever day it wants, will be able to go in and change any part of it.

Mayor Jones: But it's more responsible and comprehensive to do it as a whole.

Virginia Weeks: It is?

Mayor Jones: Yes.

Virginia Weeks: But that doesn't prevent you from going in and carving out pieces again, and getting back exactly to where we are today.

Mayor Jones: I understand that.

Vice Mayor Booros: You talk about throwing the baby out with the bath water; the nice Mayor here has just said that this Council here, I mean this Commission here, needs to look at the ordinance as a whole and update the suckers and get them revised and do the thing and we keep picking on that one little thing; but one day, four years down the road, if you want to change something, it's going to end up just the way it is. No, it's the way it is, because somebody wrote it that way. Okay? I think that you're absolutely right, but you can't look at those ordinances without some sort of training or refresher training on what the statistics are now showing; what the people want; the stuff that we saw a few weeks ago. That stuff, before I looked at the ordinances, I would want to see; all the surveys, statistics done by the University of Delaware, what the other municipalities are doing. Before I went and willy nilly opened the ordinances as a group and said let's sit down and hammer these out.

Virginia Weeks: I think the Mayor will tell you that anytime I have spoken to her about the conditions, I have encouraged her to have somebody from IPA or another expert, to guide us. The problem has been, where will the funds come from to pay for that? I have never advocated that we do it by ourselves. We are not educated enough to do it by ourselves. We need a true, well established, well educated planner, to see us through the process, as most towns in Delaware do. Lewes hires people, Georgetown hires... they do

that.

Seth Thompson: Actually Milton at one point had a town planner; they were separate from the Town Engineer.

Virginia Weeks: ...insulted.

Seth Thompson: But the Comprehensive Plan review might be an opportunity... you're already to a certain degree at least going to be into the maps. It's probably an opportunity to hear from the public and to really get some thought in terms of okay, we're in this zone. Now let's see if the regulations in that zone still make sense. I often think about just the way times change. An easy example, satellite dishes. It used to be that a satellite dish would be 5' across and obviously they're much smaller now, so towns that had ordinances that say you can't have a satellite dish, seem a little bit out of date now that they're a foot instead of something you have to erect in your backyard, basically. The same thing with I handled an application in a nearby town. That town's ordinance said you could only have one use per lot, the person wanted to have a restaurant and they called it a real estate cafe. I guess it was a slow real estate market, so trying to get creative and have a restaurant where I guess an agent would be there, and the various displays of properties for sale; just trying to come up with something a little different that would boost a bad market. But that town's ordinance said that you have to go to Board of Adjustment, based on the fact that you're looking to have two uses on a single parcel.

Virginia Weeks: Another one that sends variances to Board of Adjustment. The other thing is the timing, Mayor Jones, for a review of the zoning ordinance, you have 18 months after you submit your Comprehensive Plan is approved; that you must bring your zoning ordinances up to reflect your Comprehensive Plan, so I don't know, maybe we should get started on the Comprehensive Plan and get that done and then bring the ordinances up, rather than reviewing the ordinances now, going in, changing stuff with the Comprehensive Plan, then having to go back and figure out what did we change and how does it not work now?

Seth Thompson: I think they're two different levels. Normally the Comprehensive Plan is focusing on the districts, the boundaries of the districts; but it sounds like the town also has issues in terms of what the regs are, what the ordinance calls for within that district; so if you're looking at the district's, you might as well then start looking at the regs that affect the uses in that district. But Ms. Weeks is correct, if you were to adopt a Comprehensive Plan that changed the shape of the districts, you then would have to change your zoning map to match that.

Mayor Jones: Well, that was 5a. I just did specifically want the members of Planning and Zoning to look over the remainder of the agenda with only about 20 minutes left. If there were ideas for say d, Improvement to communication between the Commission, Mayor/Council and Town Staff; Outline of draft ordinance procedures and reviews. I'm really not sure what was intended. But the last, which was the creation of systems and relationships for increased clarity and collaboration to benefit the Town of Milton; I see that as a very positive statement, though I do not exactly know the how that went into the idea of this comments. But to my knowledge, in the years that I have watched politics here in town, I can't say that I remember a time when Town Council and a large voting board, a significant voting board, such as yourselves have gotten together and

met. So I think that that in itself, is a start and I appreciate the meeting being called to do so. I don't know that we're resolving anything here, this evening, but communication is certainly in my book a start. So among these items left on our agenda, is there anything in particular that someone from the Commission would like to address; even if it is out of order, if that's okay with Council?

Barry Goodinson: I think it's the communication thing, which is all about relationships and expectations and when I came onto Planning and Zoning, I just stupidly assumed there was some type of system in place where after Planning and Zoning meets, then there's some type of reporting back to Town Council, there might be a conversation with the Mayor. Apparently that doesn't happen. Similarly, when Town Council meets and there are Planning and Zoning issues that come up, either directly or tangentially, there would be some opportunity for it to come... I think formally in those cases where there are formal referrals, that happens and that's done at the staff level, but in terms of at the Council and the Commission level, that doesn't seem to be happening and you can build all sorts of systems in place and unless the people are intuitively drawn to pick up the phone or send an email, or just to chat with one another, those systems aren't going to do it, so we've got to create a culture in which there is this type of dialogue and so getting back to an earlier agenda item, your discussion that you want to have a dialogue. My fear in changing "shall" to "may" cuts off a very specific opportunity for dialogue, so I guess if we want a tangible next step to advance the communication between the two bodies, one would be for you guys to table that, for now.

Seth Thompson: And Council did at the last meeting.

Barry Goodinson: And leave it on the table. Leave it under the table.

Seth Thompson: One thought I had, committee's often report to Council. Council on it's agenda always has committee reports. It could be that the Commission has a liaison or maybe it doesn't even have to be that formal, really, but somebody that goes from the Commission and presents a Commission Report to the Council, along with committee reports.

Barry Goodinson: Can I ask a question? This is only probably tangentially related. Going to the Town Council meeting last week and then at the Planning and Zoning meetings, I'm always kind of confused by how we have here's the public section and then people can talk and then suddenly the cone of silence descends and no one is allowed to speak at Planning and Zoning. And then similarly at the Town Council meeting there's the public participation at the beginning, which is like this whacky grab bag of things, that may or may not relate to something that's on the agenda later on; and then the cone of silence descends and the audience sits quietly and then the theater unfolds at the front of the auditorium... Why is that? It seems to me that if there's going to be some type of dialogue and democratic process, you want it to be a little bit more porous, rather than having this is your opportunity to speak and then boom! So what's the history there; what's the law that requires that to be such?

Seth Thompson: In the Charter, the Town Council is supposed to receive complaints from Council's constituents, so that's in part what that public participation does. It serves that function that people can come to the Town and air their grievances. I suppose that's one way to think of it. But the reason that you typically do not have the public then speak during the business portion, is really a logistical one...



Barry Goodinson: It would take forever.

Seth Thompson: That's right. All of a sudden you have a lot more cooks in the kitchen.

Vice Mayor Booros: We're already there until midnight.

Seth Thompson: So there's that issue. The other element is that if there's a Public Hearing that's noticed, that needs to have a record that designates when it was opened and when that public hearing closed, so that's the record that the Council then makes a decision; the same thing with Planning and Zoning, although the way for an amendment to the zoning districts or to the zoning ordinance, the public hearing happens at the Council level and I always thought that was a little bit odd in the sense that Planning and Zoning often hears it first. I know that you guys allow the public to comment, but the way your Code is drafted, you wouldn't necessarily have to do that. You would then probably be making a less informed recommendation to Council, which at that point then, has a public hearing, but already has a recommendation from you. I always thought that was a little bit odd, but that's the other reason, that if there is a public hearing, if it's noticed, there needs to be a finite start and conclusion.

Barry Goodinson: Well that makes sense.

Mayor Jones: A question for you. When do you, as an individual, receive the package from the application on your plate, any given month that you meet?

Virginia Weeks: The Wednesday or Thursday before the Tuesday of the meeting.

Mayor Jones: And your meeting is on the following Tuesday?

Virginia Weeks: So it would be the Wednesday or Thursday in the second week of the month.

Mayor Jones: Okay, hypothetically, in getting those packages then, or even possibly a week out, instead of two business study days, three business study days... Some of the questions that you find are unanswered during your meeting times, would that give you any more advantage to being able to ask those questions ahead of time, if you had something specific you wanted to know? If that information is not coming to you on that Tuesday night and you're making decisions on what someone answered you, right, wrong or indifferent, would that be helpful to anyone; to ask some questions ahead of time, if you receive those packages any earlier? Is it just simply a situation where until you get into the meat of it, with the applicant, you may not know what the question is; spontaneous questions? That happens.

Barry Goodinson: Right. I don't know, sometimes...

Linda Edelen: The one thing that we get is Mike's report and often, very often, always, he spells out what we don't have or what this applicant does not have.

Virginia Weeks: If I may, I think that it's often we realize what we don't have during the meeting, because something comes up; but on the other hand, there are times when we have meetings... In a previous life when I was on Planning and Zoning, the land that Dogfish is now built on, when that came before us to be looked at, it was for final subdivision or site planning; I forget; right after you guys got on and so I got the packet and I opened it and there was no list in there of what was required to be put on that final site plan. There was just the engineer's report, it's done it all. Well, as a member of Planning and Zoning, I want a list of what is supposed to be on there, because I want to check it, personally, which means that you have to call Robin up; you have to ask him to get the papers out, when he has time; so you can go down and sit in the conference room and

look through all these files to see; and at that point, that particular preliminary approval had been given six year's previously. There's a one year sunset law, but here they were six year's later for final approval, but the list of things that should have been incorporated, that were required from preliminary approval to be on the plan for final approval, the list should have been there, clear. They needed to do 1, 2, 3, 4, 5, 6; but that kind of thing often isn't there.

Seth Thompson: Ms. Weeks are you talking about the conditions that were placed at preliminary, or are you talking about the Code requirements?

Virginia Weeks: Conditions placed at preliminary.

Seth Thompson: Gotcha.

Barry Goodinson: The problem is, again, we don't know what we don't know and we only have the information that's given to us, so we get the engineer's report, we don't have the larger context against which to read that. We have the blueprints, all of that stuff. What we don't have is the historic narrative of this project; which could be really helpful. I know it would be hugely time consuming to provide that, to write something up, but a lot of us are new to Planning and Zoning and a lot of these projects have long histories that have twisted and turned and understanding those twists and turns would inform our decision making now and also understanding what the limits are. So as for Heritage Creek, they come to us, they want permission to move onto the next phase and you have the townspeople with torches and pitchforks upset because the alleys haven't been paved and they want to hold the developer responsible and they don't want them to move forward with the next phase until the developer meets their past obligations. We had to kind of stumble into an understanding at that point, that we have no power over what has taken place already. We can only look at moving forward, but I guess the question is, how can we help these people solve their problem; having some of the larger historical narrative laid out. Some of the legal stuff, is we don't know what we don't know and then issues of buffers and things like that, we spend a lot of time at Planning and Zoning meetings sorting that stuff out and frankly, I'm not the brightest bulb on the tree, Seth may tell me something and I'll say, okay that makes perfect sense, or I pretend I understand it, or I understand a little piece of it and then later on, I realize, well wait a minute, that doesn't make sense here. If we had more time to have that percolate, I think we could make... Maybe we'd make the same excellent decisions we're already making, but maybe we'd make even more excellent decisions.

Mayor Jones: Are you able, collectively, as a Planning and Zoning body, to formulate some of those recommendations, needs, requests, so that they can actually be put into the hands of those that can supply you with this information?

Virginia Weeks: Not tomorrow night. We have a huge agenda.

Mayor Jones: Yes you do.

Seth Thompson: I was just thinking in terms of... and I don't know how the Town organizes it's files. I suspect it's based on the individual property. So it would make sense that minutes from prior meetings that affected that particular parcel, should be in that parcel's folder.

Virginia Weeks: And that doesn't happen.

Lynn Ekelund: It's not the case.

Barry Goodinson: No, that doesn't happen.

Seth Thompson: They don't put the minutes...? They just put them online? The minutes?

Virginia Weeks: We're having a meeting tomorrow and we're discussing certain things, but our packet was basically devoid of any information. Right?

Lynn Ekelund: Pretty much so, yes.

Barry Goodinson: Basically the information we get is what the applicant provides, so we get lots and lots of blueprints. So really the story that's told is the story that's told by the applicant and that's the only piece we're getting.

Mark Quigley: And also what we get from Seth. We get tremendous information from Seth and history and also Robin. For me, I would like the packet a week in advance, because if there are things there for us to go out and take a look and see the puddling, or the people with the pitchforks; we always divert to Seth and ask him, what are our options here? He'll go through the Code and well, the LPD was done and somebody didn't get a bond and we can't force them to get a bond now; we'd love to, but we can't and then we are basically forced to vote on something that may not be so correct.

Mayor Jones: So you don't feel like you're missing information?

Mark Quigley: It seems incomplete.

Mayor Jones: In what way, because you just stated that...

Mark Quigley: Again, again, the same thing that they're talking about. We're missing a punch list of what's required and some of the history. So often here, we go through the history with the old engineer, or if he's still the engineer and we get a lot of collaborative information at that point, that we can make somewhat of a sensible decision on a particular item at hand.

Barry Goodinson: What we don't get, is we kind of get what meets... We get yes it meets standards. Yes it's okay. Yes. Yes. Yes. We don't get a lot of information about what are Best Practices. What is this being measured against? I know that we can't be holding people up to higher standards than the minimum, but I just think understanding what we're looking at in a larger way would be really helpful.

Seth Thompson: I think you're right. Unfortunately, I always answer things from a legal perspective. Whether the Code says they could do this, or whether they can't do this, basically. But it would be helpful, I think, if there's some training opportunities because Planning and Zoning is able to attach reasonable conditions to a site plan, so that's why you're able to say let's move that tree line a little bit. That's sort of thing. Or why don't we try and have a conservation easement on the backside of this sub-division; that sort of thing. I think you need to know that those are reasonable ideas, basically, so I can see the training would be of some assistance there.

Virginia Weeks: The other thing is, Mayor and Council, for example tomorrow we're going to look at an ordinance about satellite dishes in the Historic District; but in our packet, there are no examples of other ordinances anywhere in the State of Delaware. We have no idea what the Council really would be looking for as an optimum. What do they want to see come out of this? Or do they want us to say, oh you can put them on a 35' high tower in the front yard? But we don't know what your vision is.

Seth Thompson: Well to correct one thing, it is not no longer the Historic District, it's throughout Town.

Virginia Weeks: Yes, but we don't know what your vision is, or what you're even trying to look for, for us to look at and say well that could be done, because it could be done

like this; but we have no idea. So what will happen is, tomorrow night we'll have a discussion; we'll say we really don't know what the Council wants; why don't we look at other ordinances from other Towns and then we'll charge Robin with going and getting ordinances from other Towns and they'll show up next week and that piece of our agenda will be on the next months' agenda and that could really be sped up, if there was a narrative for what the Town is looking for; or what the Council is looking for and one or two examples of other ordinances, on how to get there.

Mayor Jones: No argument.

Councilman Côté: My understanding and I don't know if I'm understanding this correctly, but for items to have gotten on your tomorrow night's agenda, everything should have been submitted to the Town Hall 45 days ago.

Virginia Weeks: My understanding was that it had to be on before the first of the month of the meeting. I don't know.

Seth Thompson: I suppose it depends on what the specific agenda item is, so for instance...

Councilman Côté: Plans to be approved or sub-division plans.

Virginia Weeks: We don't control that. That's controlled at Town Hall.

Councilman Côté: I understand that. But I'm trying to figure out if I'm going to come before the Planning and Zoning and I have to submit my information 45 days before your meeting to get on your agenda, I'm not sure why the package information for the meeting can't be given out earlier?

Vice Mayor Booros: If Council sends something forward to them, from a meeting the first of the month sometimes, it doesn't get put on that next agenda, does it?

Seth Thompson: It can, as long as there are seven days.

Vice Mayor Booros: It can. Okay. I was just wondering, because if nobody in the Commission was in attendance at the Council Meeting or stayed until midnight to hear that particular thing, it would be in the minutes the following month, once they're transcribed. Well it should be in the minutes the following month, that they could see what Council was talking about, as far as that was concerned. For instance, the satellite dish thing and that also came with a letter of recommendation from the Historic Preservation; what their recommendation to Council was.

Councilman Côté: I understand.

Mayor Jones: If I may, then Planning and Zoning is correct; it went from our hands on the recommendation from the Historic Preservation Commission to let's have Planning and Zoning have a look at this. What was Council's vision and/or direction to Planning and Zoning in forwarding that to them? Did we concur with the Historic Preservation's recommendation that that be looked at town wide, as opposed to Historic District. That would have been one thing that we could have been in agreement with and forwarded on. Some of us know of ordinances on satellite dishes and could have shared that at that moment and let somebody else pick that ball up and take that example on. So you're looking more for a charge from Council, when something comes your way for further review and I find that very reasonable to expect.

Barry Goodinson: Yes, for example, when the whole parking thing was sent over to us, we were all scratching our heads, because we weren't exactly sure what was being asked of us; so even if it's just a cover sheet that says this came to Town Council from this

person; this is what they asked for; this is the information that we have; this is what we're thinking; now we want Planning and Zoning to do the following. That would just be very, very helpful.

Mayor Jones: I do need to let you know that it is ten of and we're going to need to hustle to put the room back together, so I do apologize for not getting through the entire agenda and perhaps once you talk with Mr. Mazzeo; you'll want to do this again. We have some homework to do on the Council side and staff side. But anything else to be said with the Commission or the Council this evening?

Linda Edelen: We'd like to say thank you very much.

Barry Goodinson: Yes, thank you.

Mayor Jones: Thank you.

6. Adjournment

Mayor Jones: Do I hear a motion to adjourn?

Vice Mayor Booros: I make a motion to adjourn.

Councilman Coté: Second.

Seth Thompson: And the Commission needs a motion to adjourn, as well.

Lynn Ekelund: I need a motion to adjourn.

Linda Edelen: So moved.

Mark Quigley: I second it.

Mayor Jones: Council, all those in favor say aye. Opposed. Motion carried.































